

Title	Judicial Council Jury Instructions (adopt Cal. Rules of Court, rules 855, 6.57 and 6.58; amend rule 6.13; and repeal section 5 of the Standards of Judicial Administration)
Summary	Proposed rule 855 would acknowledge the Judicial Council's Jury Instructions as the official jury instructions designated for use in the State of California and recommend their use whenever appropriate. Proposed rules 6.57 and 6.58 would create new advisory committees on civil and criminal jury instructions, respectively, to maintain, update, and revise the Judicial Council's jury instructions. Proposed amended rule 6.13 would add a new duty to the Rules and Projects Committee, requiring it to make recommendations to the council on proposed changes to the instructions.
Source	Administrative Office of the Courts, Office of the General Counsel
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Discussion	<p>The Judicial Council's task force on jury instructions was charged with drafting new sets of civil and criminal jury instructions that are understandable to jurors. The civil subcommittee of the task force will finish drafting a comprehensive set of civil jury instructions at the end of 2002. These instructions are slated to be published in the fall of 2003. The criminal subcommittee of the task force will finish drafting a comprehensive set of criminal jury instructions at the end of 2004. These instructions are slated to be published in the fall of 2005.</p> <p>Section 5 of the Standards of Judicial Administration currently provides that the California Jury Instructions Civil (BAJI) and Criminal (CALJIC) are recommended for use in trials unless the judge finds that a different instruction would more adequately, accurately, or clearly state the law. Proposed new rule 855 would replace section 5, establish the council's instructions as those recommended for use in California, and require that the Administrative Office of the Courts publish the instructions.</p> <p>Following publication, these instructions must be maintained and new instructions may be needed to update the publication. Accordingly, it is necessary to create permanent advisory committees to ensure that the jury instructions will continue to state the law accurately while adhering to plain English drafting principles.</p> <p>The proposed rules state the purpose of the advisory committees and include guidelines for the composition of their members. The committees will be composed of approximately 12 to 15 members each, including justices, judges, and attorneys, who will be selected</p>

from geographic locations throughout California.

The Judicial Council will review and approve the initial comprehensive sets of civil and criminal jury instructions. Under the proposed amendment to rule 6.13, the Rules and Projects Committee would oversee the process of obtaining public input on the instructions, and make recommendations to the council on changes proposed by the advisory committees.

The text of the proposed rules and standard is attached.

Attachment

Rules 855 and 6.57 of the California Rules of Court would be adopted, rule 6.13 would be amended, and section 5 of the Standards of Judicial Administration would be repealed, effective July 1, 2003, and rule 6.58 of the California Rules of Court would be adopted, effective July 1, 2005, to read:

Rule 855. Judicial Council Jury Instructions

- (a) [Purpose]** The California Jury Instructions approved by the Judicial Council are the official instructions for use in the State of California. The goal of these instructions is to improve the quality of jury decision-making by making jury instructions more understandable to the average juror.
- (b) [Accuracy]** The Judicial Council endorses these instructions for use and makes every effort to insure that they accurately state existing law. The articulation and interpretation of California law, however, remains within the purview of the Legislature and the courts of review.
- (c) [Public access]** The Administrative Office of the Courts must provide copies and updates of the approved jury instructions to the public on its Website. The Administrative Office of the Courts may contract with an official publisher to publish the instructions in both paper and electronic formats.
- (d) [Updating and amendments]** The Judicial Council instructions will be regularly updated and maintained through its advisory committees on jury instructions. Amendments to these instructions will be circulated for public comment before publication.
- (e) [Use of instructions]** Use of the Judicial Council instructions is strongly encouraged. If the latest edition of the jury instructions approved by the Judicial Council contains an instruction applicable to a case and the trial judge determines that the jury should be instructed on the subject, it is recommended that the judge use the Judicial Council instruction unless he or she finds that a different instruction would more accurately state the law and be understood by jurors. Whenever the latest edition of the Judicial Council instructions does not contain an instruction on a subject upon which the trial judge determines that the jury should be instructed, or when a Judicial Council instruction cannot be modified to submit the issue properly, the instruction given on that subject should be simple, brief, clear, impartial, and free from argument.

1 Rule 6.13. Rules and Projects Committee

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- 3 (a) **[Oversight of advisory committees]** The Rules and Projects Committee
- 4 shall review the annual work plan of each advisory committee and task
- 5 force to assess project priorities and timelines and to ensure that it is
- 6 consistent with the general and any annual charges to that committee or
- 7 task force and with the council's policies and priorities. The
- 8 committee's approval of a work plan permits the advisory committee or
- 9 task force to implement the work plan, subject to available resources.
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- 11 (b) **[Recommendations]** The committee shall recommend to the Executive
- 12 and Planning Committee whether each proposal for new or amended
- 13 rules, standards, or forms should be on the council's consent or
- 14 discussion agenda and how much time should be allocated for
- 15 discussion. It also shall recommend to the council whether such a
- 16 proposal should be approved and, when appropriate, identify issues for
- 17 discussion. If the committee recommends against approval, it shall state
- 18 the reasons for doing so.
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- 20 (c) **[Rules, standards, and forms]** The committee shall establish and
- 21 maintain a rule-making process that is understandable and accessible to
- 22 the public. It shall assist the council in making informed decisions about
- 23 rules of court administration, practice, and procedure by:
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- 25 (1) Identifying the need for new rules, standards, and forms;
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- 27 (2) Reviewing proposals for rules, standards, and forms and circulating
- 28 them for public comment in accordance with the committee's
- 29 procedures and guidelines;
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- 31 (3) Establishing and publishing procedures that solicit and consider
- 32 relevant input from the public for the proposal and adoption of
- 33 rules, standards, and forms;
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- 35 (4) Providing guidelines for the style and format of rules and ensuring
- 36 that each proposal presented to the council is consistent with the
- 37 guidelines;
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- 39 (5) Ensuring that proposals for new or amended rules, standards, and
- 40 forms do not conflict with statutes or other rules;
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- 1 (6) Recommending whether the council should approve, modify, or
2 reject each proposal; and
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4 (7) Initiating circulating orders to allow the council to adopt rules,
5 standards, and forms between council meetings if necessary.
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7 **(d) [Jury instructions]** The committee shall establish and maintain a
8 process for obtaining public input on the jury instructions approved by
9 the Judicial Council, and shall assist the council in making informed
10 decisions about jury instructions by making recommendations to the
11 council on whether to approve proposed new or modified instructions
12 submitted by the advisory committees on jury instructions.
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14 **Rule 6.57 Advisory Committee on Civil Jury Instructions**
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16 **(a) [Area of Focus]** The committee regularly reviews case law and statutes
17 affecting jury instructions and makes recommendations to the council
18 for updating, amending, and adding topics to the Judicial Council’s civil
19 jury instructions.
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21 **(b) [Membership]** The committee must include at least one member from
22 each of the following categories, and a majority of the members must be
23 judges:
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25 (1) Appellate court justice;
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27 (2) Trial court judge;
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29 (3) Lawyer whose primary area of practice is civil law; and
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31 (4) Law professor whose primary area of expertise is civil law.
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33 **Rule 6.58 Advisory Committee on Criminal Jury Instructions**
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35 **(a) [Area of Focus]** The committee regularly reviews case law and statutes
36 affecting jury instructions and makes recommendations to the council
37 for updating, amending, and adding topics to the Judicial Council’s
38 criminal jury instructions.
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40 **(b) [Membership]** The committee must include at least one member from
41 each of the following categories, and a majority of the members must be
42 judges:

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- (1) Appellate court justice;
- (2) Trial court judge;
- (3) Lawyer whose primary area of practice is criminal defense;
- (4) Deputy District Attorney or other attorney who represents the
People of the State of California in criminal matters; and
- (5) Law professor whose primary area of expertise is criminal law.

**~~Sec. 5. Use of Judicial Council California Jury Instructions—Civil (BAJI) and
California Jury Instructions—Criminal (CALJIC)~~**

~~Whenever the latest edition of the jury instructions—Civil (BAJI) or California Jury
Instructions—Criminal (CALJIC) contains an instruction applicable to a case and the trial
judge determines that the jury should be instructed on the subject, it is recommended that
the judge use the BAJI or CALJIC instruction unless he finds that a different instruction
would more adequately, accurately, or clearly state the law. Whenever the latest edition
of BAJI or CALJIC instructions does not contain an instruction on a subject upon which
the trial judge determines that the jury should be instructed, or when a BAJI or CALJIC
Judicial Council instruction cannot be modified to submit the issue properly, the
instruction given on that subject should be simple, brief, impartial and free from
argument. When an instruction requested by a party is a modified BAJI or CALJIC
instruction, the party should indicate therein, by use of parentheses or other appropriate
means, the respect in which it is modified. A trial judge in considering instructions to the
jury shall give no less consideration to those submitted by the attorneys for the respective
parties than to those contained in the latest edition of California Jury Instructions Civil
(BAJI) or California Jury Instructions Criminal (CALJIC).~~